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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES LYNN O'HINES,
12 CDCR #K-86989,
13 ADC #197067,

14 Plaintiff,

15 vs.

16 JOHN ONTIVEROS, Warden, et al.,

17 Defendants.
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Civil No. 08-0699 DMS (BLM)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)
AND/OR FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in
20 Florence, Arizona, and proceeding pro se, has filed a civil action which is entitled a "Coram
21 Nobis Appeal" but which invokes federal jurisdiction pursuant to 28 U.S.C. § 1332 (diversity
22 of citizenship), 28 U.S.C. § 1655 (lien enforcement); 18 U.S.C. § 1201 (kidnaping), 42 U.S.C.
23 § 2000c (Department of Education Organization Act), 28 U.S.C. § 1738A (full faith and credit
24 given to child custody determinations), 42 U.S.C. §§ 654, 655, 663 (Title IV-D of the Social
25 Security Act) and the "Model Penal Code § 210.1 (1977)".¹ (Compl. at 1.)

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28 ¹ The Court notes that Plaintiff was formerly a California state inmate. It is unclear whether he is currently a California state inmate housed temporarily in Arizona, or whether he is now serving an Arizona prison sentence.

1 While the exact nature of Plaintiff's claims is far from clear, he seeks an injunction
 2 preventing defendants, who appear to be prison officials in California, Arizona, and Tijuana,
 3 Mexico, from "further custodial prosecutions" and from "impos[ing] draconian punishments for
 4 racial, religious, [and] sexual discrimination." (*Id.* at 7.)

5 I.

6 Failure to Pay Filing Fee or Request IFP Status

7 All parties instituting any civil action, suit or proceeding in a district court of the United
 8 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 9 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if
 10 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).
 11 *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
 12 1176, 1177 (9th Cir. 1999).

13 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action,
 14 nor has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate
 15 dismissal pursuant to 28 U.S.C. § 1914(a).

16 II.

17 Conclusion and Order

18 For the reasons set forth above, the Court hereby:

19 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 20 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

21 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"
 22 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
 23 IFP which includes a certified copy of his trust account statement for the 6-month period
 24 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
 25 3.2(b).

26 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
 27 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 28 *Pauperis*."

1 If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
2 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
3 prejudice and without further Order of the Court.

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7 DATED: April 21, 2008

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10 HON. DANA M. SABRAW
11 United States District Judge
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